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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

VICTORIA TAI NGUYEN,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

D045483

(San Diego County Super. Ct. Nos.
CS 182519, BAN 56201)

Proceedings in mandate after superior court denied request for bail on appeal.

Yvonne E. Campos, Judge. Petition granted.

FACTUAL AND PROCEDURAL BACKGROUND

On October 7, 2004, following trial, a jury found Victoria Tai Nguyen guilty of three theft-related felonies and three theft-related misdemeanors. The court allowed

Nguyen to continue to remain on bail until the sentencing on the condition that she surrender her passport and not travel beyond San Diego and Orange Counties.

On November 17, 2004, the court sentenced Nguyen, placing her on probation for three years on two of the felonies on condition that she spend 365 days in county jail¹ and stayed imposition of sentence on the third felony under Penal Code² section 654. The court imposed sentences of 180 days, 365 days and 365 days on the respective misdemeanors with the terms to run concurrent with the felonies, and ordered Nguyen to pay fines and restitution. Nguyen's counsel advised the court Nguyen was filing a notice of appeal and had retained counsel, and asked the court to grant Nguyen bail on appeal. The court denied the request for bail stating,

" . . . I am familiar with the various provisions regarding posting of bail. I am also aware of the fact that it is up to the court's discretion whether or not to. And I have previously exercised discretion in favor of Ms. Nguyen, to allow her [out] on bond pending [the] sentencing hearing. I will not further exercise that discretion. Therefore, she will be remanded to the custody of the sheriff forthwith."

Nguyen filed a motion for bail pending appeal. We requested a response from the People, elected to treat the motion as a petition for writ of mandate and provided *Palma* notice. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

1 The court gave Nguyen one-day credit for time served.

2 All statutory references are to the Penal Code unless otherwise specified.

DISCUSSION

Section 1272.1, subdivision (c), requires the court to provide "a brief statement of reasons in support of an order granting or denying a motion for bail on appeal." The statement need not be exhaustive but it must describe "the basis for the order with sufficient specificity to permit meaningful review." (§1272.1, subd. (c).)

The statement by the trial court explained that bail was discretionary, the court had exercised its discretion to allow bail in the past but it would not do so in the future. The trial court stated facts but no reasons. While the court may have been, as it said in its prefatory remarks, "familiar with the various provisions regarding posting of bail" and impliedly used them in denying bail on appeal, the court did not give a justification with "sufficient specificity to permit [us to conduct a] meaningful review." (§1272.1, subd. (c).) The court did not comply with the statute.

DISPOSITION

Let a writ of mandate issue directing the superior court to vacate its November 17, 2004 order, conduct further proceedings to determine the propriety of bail on appeal and enter an order consistent with the statute, stating reasons in support of an order granting

or denying a motion for bail on appeal. This opinion will be final as to this court immediately. (Cal. Rules of Court, rule 24(b)(3).)

McCONNELL, P. J.

WE CONCUR:

NARES, J.

IRION, J.